IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:::

JUDGMENT

Laxmi Lal
vs.
Paras Ram and another.

S.B.CIVIL SECOND APPEAL NO.19/1984 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 17.11.1983 PASSED BY SHRI S.K. BANSAL, ADDITIONAL DISTRICT JUDGE, RAJSAMAND IN APPEAL DECREE NO.16/1982.

DATE OF JUDGMENT ::: 7.2.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. M Shishodia a/w Mr. M Aslam, for the appellant.
None present for the respondents.

- - - - -

BY THE COURT:

Heard learned counsel for the parties.

The appellant/plaintiff filed a suit for recovery of Rs.3,282.13p. against the defendants with the allegation that the plaintiffs are doing the business and the defendant used to purchase cotton from the plaintiffs. On

Ashad Sud Dasham Samwat Year 2034 (upto 26.6.78), the accounts of the defendant were settled and the defendant admitted that the amount of Rs.2,535/- in this account is due in him. The defendant after admitting his liability in security to that due amount, executed a promissory note in favour of the plaintiffs but he did not pay the said principal amount and interest levied thereon, therefore, the plaintiffs' case is that at the time of filing the suit, the total amount of interest is Rs.560/- along with the principal amount is Rs.2535/- total Rs.3042/- were due in the defendant. The plaintiffs further stated that on Ashoj Bad Ekam Samwat 2034 i.e. 28.9.1979, the defendant further purchased one bag of cotton vide bill no.457. The cost of this cotton amounting to Rs.141.17p. also was not paid by the defendant. Again on Magsar Bad Ekam Samwat 2034 i.e. on 26.11.1977, the defendant purchased one more bag of cotton, the cost whereof was Rs.136.96p. The plaintiffs pleaded that there was condition of payment of interest at the rate of Re.1/- per Rs.100/- per month on due amount and that condition is printed on the back of the bill. The plaintiffs, therefore, pleaded that total Rs.298.13p. of cotton purchased, referred above, was due in the defendant, against which, the defendant paid Rs.30/-, Rs.40/- and Rs.10/- total Rs.80/- on various dates. In view of the above payments, the plaintiffs amount of Rs.218.55p. remained due in defendant upto Chat Sud Pancham Samwat 2035 and interest of Rs.22/- became due. Thereby, total amount of Rs.240.13p. remained due in the defendant. The plaintiffs, with these allegations, prayed that a decree of

Rs.3,042/- plus Rs.240.13p total Rs.3232.13p be passed against the defendant along with interest at the rate of Re.1/- per Rs.100/- per month.

The defendant contested the suit of the plaintiffs but without denying the facts as stated by the plaintiffs in paras no.1 and 2 of the plaint wherein there is a reference of business dealings. The defendant's only contention with respect to paras no.1 and 2 was that the facts stated in paras no.1 and 2 are not admitted. However, the defendant took a plea that the plaintiffs are money lenders and they are not having license as required under the Rajasthan Money Lenders Act, 1963 (for short 'the Act of 1963') and the plaintiffs have not complied with the provisions of Section 22 and 23 of the Act of 1963, therefore, the suit filed by the plaintiffs is not maintainable.

The trial court framed the issues wherein one of the issue was whether the plaintiffs are money lenders and they have not complied with the provisions of the Act of 1963 ?

The evidence were led by the parties and thereafter, the trial court held that the plaintiffs proved execution of the pronote which contains the term of interest also and the plaintiffs by evidence oral as well as documentary proved that the defendant purchased the cotton from the plaintiffs as alleged by the plaintiffs in their plaint. However, while deciding the issue no.3, the trial court observed that the plaintiff PW1 himself admitted that his more than one lakh rupees are due in various persons which is the amount of cotton as well as of clothes.

The trial court also observed that the plaintiffs

themselves admitted that they are charging interest over the due amount against the sale of cotton as well as clothes. The plaintiffs also admitted that they have no money lending business. The plaintiffs further admitted that from whom they are having the business relations and there is dues against them, they obtained the pronotes from those persons. On these admissions of the plaintiffs, the trial court reached to the conclusion that the plaintiffs are money lenders and they are not having license as required under the Act of 1963 and they have not complied with the provisions of Sections 22 and 23, therefore, the plaintiffs' suit is not maintainable. The trial court also held that the due amount in the defendant falls in the definition of loan. The trial court ultimately dismissed the suit of the plaintiffs vide judgment and decree dated 2.3.1982, against which, the plaintiffs preferred appeal that too was dismissed by the first appellate court only on the ground that the plaintiffs are money lenders and they have not obtained license of doing the business of money lending and they have not complied with the provisions of Sections 22 and 23 of the Act of 1963 . Hence, this second appeal.

While admitting the appeal, following substantial question of law was framed by this Court :-

> “Whether the amount due to the plaintiff-appellant amounts to a loan within the meaning of the Rajasthan money lenders Act, 1963 ?”

According to the learned counsel for appellants, two courts committed serious error of law which vitiates the judgment and decree of dismissal of the suit of the plaintiffs. According to learned counsel for the appellants, the appellants are traders and the defendant purchased the goods as trader from the appellants. This fact has not been denied by the defendant in his written statement. Two courts below misread the statement of the plaintiffs. The plaintiff PW1 only stated that he is businessman engaged in the trade and trade, he is selling the goods and credit basis and to secure his amount, he obtained the promissory notes from the traders. The plaintiffs very specifically stated that they are doing the business of money lending. Not only this, but there is no evidence rather say there is no pleading of the defendant that the plaintiffs ever advanced any loan to any person. The defendant only pleaded vaguely that the plaintiffs are money lenders without specifying that the plaintiffs are doing the business of money lending. It is also submitted that if a trader charges interest over the due amount on the cost of sold goods, the transaction cannot be termed to be advancing loan in any manner, therefore, Section 11 of the Act of 1963 cannot be invoked in this matter.

I have considered the submissions of learned counsel for the appellant and perused the record and also perused the statements of the witnesses, certified copy whereof has been provided by learned counsel for the appellant and which are taken on record.

The definition of Loan as given in Section 2(9) of the Act of 1963 is as under :-

“(9) 'loan' means an advance at interest, whether of money or in kind, but does not include :-

(a) .....

(j).....”

Therefore, it is clear from the above definition that the loan is a money advanced on interest over which the interest may be charged in cash or kind. Even if this definition is extended, then also, it cannot be said that the sale transaction on credit basis can be treated to be loan advanced to the purchaser of the goods during the course of the business engaged in the trade.

Apart from the above, it is clear from a bare reading of Section 11 of the Act of 1963 that the bar against the suit is in a case only when the suit is filed by the money lender. Money lender as per the definition given in Section 2(10) can be an individual or an undivided Hindu Family or a company or an unincorporated body of individuals but as per sub-clauses (a) and (b), they must be engaged in the busines of money lending. Here in this case, from the evidence, it appears that the plaintiffs only admitted that they are doing the business and they are traders. The plaintiffs sold the goods to the defendant and that finding has been recorded by the trial court and has not been reversed by the first appellate court. The plaintiffs' case, which has not been denied by the defendant, is that against the dues on account of sale of the goods were

admitted by the defendant and to secure the cost of the goods, the promissory note was executed and this promissory note was not executed by the defendant to secure the loan amount of the plaintiffs. Therefore, the amount sought to be recovered by the plaintiffs is not falling in the definition of loan in any manner nor the plaintiffs can be said to be a money lender engaged in the business of money lending by admitting that from the traders, he is obtaining promissory notes to secure his trade money.

In view of the above reasons, the findings of the two courts below recorded on issue no.3 cannot be sustained, hence, set aside and it is held that the plaintiffs are not money lenders and the amount involved in the suit is not the loan amount as defined under the Act of 1963.

Since the two courts below decided the other questions of facts in favour of the plaintifs, therefore, the suit of the plaintiffs deserves to be decreed, hence, decreed and it is held that the plaintiffs are entitled to recover Rs.2,223/- and Rs.198.13p. from the defendant as principal amount from the defendant with interest at the rate of 6% p.a. instead of interest at the rate of Re.1/- per Rs.100/- per month.

Accordingly, this appeal is allowed.

(PRAKASH TATIA), J.

S.Phophaliya